UNITED
NATIONS

AT

Administrative Tribunal

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LIMITED

AT/DEC/517
29 May 1991

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 517

Case No. 551: VAN BRANTEGHEM

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Ahmed Osman, Vice-President, presiding; Mr. Arnold Kean; Mr. Ioan Voicu;

Whereas, in Judgement No. 439, rendered by the Tribunal on 17 May 1989, in favour of the Applicant Ronny Paul Van Branteghem, a former staff member of the United Nations Development Programme (UNDP), the Tribunal ordered the Respondent to "bear the return travel expenses of the Applicant and his family members and ... cease to withhold the equivalent amount from sums otherwise due to the Applicant".

Whereas, on 2 August 1989, the Chief, Accounts Section, Division of Finance, UNDP, informed the Applicant that the UNDP Administration had processed his final payments and that, in doing so, it had deducted from his separation payments the amount of $1,740 representing the "cost of shipment of personal effects in excess of entitlements", from his previous duty station, Bangkok, to his new duty station, Khartoum, in September 1985.

A lengthy correspondence ensued between the Applicant, the UNDP Administration and the Executive Secretary of the Tribunal concerning the deduction of $1,740 from the Applicant's final payment and the implementation of Judgement No. 439. The Applicant argued essentially that the deduction of $1,740 from his final payment should not have been made, as the Administration had approved the conversion, from surface to air transport on a one to one basis, of a split shipment of his personal effects from Bangkok to Khartoum.

On 27 April 1990, the Chief, Payroll Unit, Disbursement Section, Accounts Division, Office of Programme Planning, Budget and Finance, United Nations, forwarded to the Applicant a check in the amount of $338.14 representing the net of his entitlements and a copy of his final pay statement with a note attached thereto explaining how UNDP had calculated that amount.

On 28 April 1990, the Applicant filed an application containing the following pleas:

> "PLEAS
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> The Applicant respectfully requests the Tribunal to enforce the Judgement No. 439 dated 17 May 1989, whereby the Respondent was ordered by the Tribunal to quote cease to withhold the equivalent [amount from] sums otherwise due to the Applicant unquote;
>
> The Applicant further requests the Tribunal to find that the delays in implementing the above mentioned Judgement No. 439 constitute an obstruction of justice which has brought financial disadvantage to the Applicant;
>
> The Applicant requests the Tribunal to award an indemnization of US$5,000 to the Applicant for moral and financial injuries sustained by the Applicant as a consequence of the unreasonable delays in the implementation of the Tribunal's Judgement No. 439."

On 15 June 1990, the Applicant responded to the Chief, Payroll Unit, complaining about the deduction of $1,740 from his final entitlements. On the same day the Applicant copied this communication, with attachments, to the Executive Secretary of the Tribunal.

Whereas the Respondent filed his answer on 21 September 1990;

Whereas the Applicant filed written observations on 21 January 1991;

Whereas, on 23 April 1991, the President of the Tribunal, pursuant to article 10 of the Rules of the Tribunal, put questions to the Applicant and the Respondent;

Whereas, on 26 April 1991, the Applicant submitted his answer to the Tribunal's question;

Whereas, on 1 May 1991, the Respondent submitted his answers to the Tribunal's questions;

Whereas the Applicant's principal contentions are:

1. The Respondent should not have deducted $1,740 from the Applicant's final entitlements under Judgement No. 439 since the Respondent had approved the conversion of his split shipment, from Bangkok to Khartoum, from surface to air transport on a one to one basis.

2. The delays by the Respondent in implementing Judgement No. 439 constitute an obstruction of justice tantamount "to a bureaucratic war of attrition, if not harassment".

Whereas the Respondent's principal contentions are:

1. Judgement No. 439 has been implemented.

2. Delays in the implementation of Judgement No. 439 were neither due to bad faith on the part of the Administration nor a cause of any financial or moral injury to the Applicant.

3. Deduction from the Applicant's final entitlements of the amount of $1,740 was properly made in accordance with section 1207, subsection 4.4(ii), of the UNDP General Administration Manual.

The Tribunal, having deliberated from 15 to 29 May 1991, now pronounces the following judgement:

I. In his first plea, the Applicant requests the Tribunal to enforce Judgement No. 439, Van Branteghem, dated 17 May 1989, whereby the Respondent was ordered to "cease to withhold the equivalent amount from sums otherwise due to the Applicant". These sums concern the final payments upon separation of the Applicant.

II. As to the facts, the Tribunal notes that on 27 April 1990, the Respondent forwarded to the Applicant a cheque in the amount of $338.14 asserting this to be the net sum of his entitlements. He also forwarded a copy of the Applicant's final pay statement, with a note attached thereto explaining the calculations made. It appeared that an amount of $1,740 had been deducted from the Applicant's final payment as this was considered by the Respondent as "cost of shipment of personal effects in excess of entitlements".

III. According to the Respondent, the Applicant had exceeded his entitlements with regard to the transfer in 1985, of his personal effects from Vigo, Spain, his home, to Khartoum, Sudan, the place of his new assignment. The Respondent asserts that the Applicant was entitled to payment of the transfer cost of 1,155 kgs. by air from Vigo to Khartoum. On the basis of a "split shipment", which had been authorized, the Applicant had shipped 540 kgs. from Vigo to Khartoum, and 580 kgs. from Bangkok to Khartoum. As the rate for airfreight from Bangkok to Khartoum exceeded the Applicant's entitlements (which was the rate for airfreight from Vigo to Khartoum) by $3 per kg., UNDP overpaid his entitlements by 580 kgs. x $3 per kg. = $1,740. The intention to deduct that amount from the Applicant's final pay was first communicated to him by the Respondent in a letter dated 2 August 1989.

IV. In correspondence with the Respondent, the Applicant objected to that deduction and asserted that a split air transport of his personal effects (Bangkok-Khartoum and Vigo-Khartoum) had been duly authorized by the UNDP office in Bangkok at a conversion rate of one to one (sea to air) because of the hazards of surface transport to Khartoum.

V. The Respondent does not deny the existence of that authorization but interprets it in the sense that allowing the split shipment did not authorize the Applicant to exceed his transportation entitlements, and, accordingly, the airfreight rate entitlements from Vigo to Khartoum were also applicable to the split shipment from Bangkok to Khartoum, with any excess costs being payable by the Applicant.

VI. Thus, there are two contradictory interpretations concerning the 1985 authorization of the split shipment of the Applicant's personal effects from Bangkok to Khartoum.

VII. The Tribunal observes that the claim from UNDP regarding the alleged over-payment for the Applicant's shipment reached the latter on 11 September 1989, i.e., nearly four years after the shipment, and at a time when the Applicant had long since left the service of the United Nations. The

Tribunal considers that such a course of action was not appropriate and it caused unjustified delays in the payment of the Applicant's final entitlements.

VIII. In this regard, the Tribunal recalls that in its Judgement No. 410, Noll-Wagenfeld (1988), paragraph XXX, reference was made to a communication dated 30 July 1987, announcing a determination by the Under-Secretary-General for Administration and Management to review the policy regarding recovery of overpayments to staff members, and pending clarification of such policy "to limit to two years recovery of overpayments made to staff members in cases where such overpayments are due to action of [the] Administration and not of [the] recipient and to suspend recovery beyond two years". Already in 1982, the Tribunal expressed its doubt that: "Respondent should be considered free, without regard to general principles of equity, to assert claims against staff members after any lapse of time, no matter how protracted ..." (Judgement No. 124, Kahale (1968), para. I).

IX. But aside from this excessive delay, the Tribunal considers that the Respondent could not, after litigating the Applicant's final entitlements in this forum in early 1989, later raise set-offs against these entitlements which it could have asserted in the earlier litigation. To do so violates the principle of res judicata. The Respondent was bound to comply with Judgement No. 439, which precluded him from withholding amounts from the payments adjudged due to the Applicant.

X. In his second plea, the Applicant requests the Tribunal to find that the delays in implementing Judgement No. 439 constituted an obstruction of justice which has brought moral and financial disadvantages to the Applicant.

XI. Noting that the Respondent regrets the delay in implementing Judgement No. 439 of 17 May 1989, the Tribunal considers that a delay of more than two years cannot be explained by the need to recalculate the Applicant's final entitlements and justified by the extensive correspondence on that subject.

XII. The Tribunal finds that the Applicant suffered injury from a certain degree of negligence on the part of the Administration, which caused an unreasonable delay in even the partial implementation by the Respondent of Judgement No. 439, as the payment of $338.14 reached the Applicant only on 15 June 1990, i.e. more than one year after the pronouncement of the Judgement.

XIII. At the same time, the Tribunal recalls, as it did in Judgement No. 414, Apete (1988), paragraph XIV, quoting from Judgement No. 353, El-Bolkany (1985), paragraph X, that an inordinate delay "not only adversely affects the administration of justice, but on occasions can inflict unnecessary anxiety and suffering to an Applicant". This being the case, the Tribunal considers that the Applicant is entitled to an award for the delay caused by the Respondent, which the Tribunal fixes at $500.

XIV. For the foregoing reasons, the Tribunal orders the Respondent to pay to the Applicant, immediately, the amount of $1,740 and, as compensation for delays, $500.

XV. All other pleas are rejected.

(Signatures)

Ahmed OSMAN
Vice-President, presiding

Arnold KEAN
Member

Ioan VOICU
Member

Geneva, 29 May 1991

Paul C. SZASZ
Acting Executive Secretary